



THE CITY OF NEW YORK  
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January 6, 2017

**VIA ECF**

Honorable Katherine Polk Failla  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: Ernesto Rodriguez v. City of New York, et al., 16-CV-744 (KPF) (SN)

Your Honor:

I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, representing defendants City of New York, Police Officer ("P.O.") Acosta, Sergeant Cruz, P.O. Guzman, P.O. Regan, and P.O. Rivas in the above-referenced matter. Defendants respectfully request an informal conference before Your Honor to address an issue that has arisen in this matter.

Following the parties' initial conference on October 7, 2016, while continuing post-§1983 Plan discovery, the parties have been engaged in settlement discussions. On December 16, 2016, the parties chieived a minimal distance between their settlement positions and became very close resolving this matter. At that point, because the prospects of settlement were high, counsel agreed to commence depositions this week, thereby allowing the parties a chance to settle but also ensuring that, if necessary, they could complete party depositions before the January 20, 2017 deadline. This week, on January 3, 2017, defendants offered the amount demanded by plaintiff to settle his claims. Plaintiff, however, instead of resolving this action as previously demanded, has rescinded his demand and now expresses a desire to litigate his claims. No new information provided by defendants or other notable discovery developments precipitated the about-face in plaintiff's position.

From defendants' perspective, this is a highly unusual turn of events and, without impugning the intentions of plaintiff or his counsel, plaintiff's negotiation tactics appear to test the boundaries of good faith. The parties are prepared to complete discovery on schedule. However, defendants respectfully submit that an informal conference before the Court at the

Court's earliest convenience, with plaintiff's participation, may lead to the resolution of this case and conserve the resources of all parties to this action.

Counsel for the parties have been in written communication about defendants' desire to make the instant request since January 3, 2017, and defense counsel has attempted to reach plaintiff's counsel by telephone. Although he has been responsive, due to plaintiff's counsel's limited availability this week, counsel have not been able to confer by telephone to discuss the instant request. However, in the parties' written communications, plaintiff has not objected to this request. Based upon counsel's discussion, upon information and belief, plaintiff is not currently living in the New York area. To the extent that the Court grants the instant request, if it is necessary for plaintiff, defendants have no objection to plaintiff appearing before the Court by telephone.

Thank you for your consideration herein.

Respectfully submitted,

/s/

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CC: VIA ECF  
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